

101 KAR 2:230. Kentucky Employee Mediation and Workplace Resolution Programs.

RELATES TO: KRS 18A.030(2)(i), 18A.110

STATUTORY AUTHORITY: KRS 18A.110(7)(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110 authorizes the Secretary of Personnel to promulgate administrative regulations that develop programs to improve the work effectiveness of state employees. This administrative regulation establishes the operational procedures for the Kentucky Employee Mediation and Workplace Resolution Programs.

Section 1. Establishment of the Kentucky Employee Mediation Program (KEMP). (1) The Personnel Cabinet shall establish and administer the Kentucky Employee Mediation Program to coordinate mediations and the State Government Mediator Pool, as established in subsection (4) of this section, in state agencies and provide them with additional services.

(2) Eligibility for services.

(a) An employee or supervisor may request mediation services through the Kentucky Employee Mediation Program in order to resolve workplace issues. The request shall be made using the Mediation Request Form.

(b) Participation by all parties involved in the mediation sessions shall be voluntary. Each party shall sign an agreement to mediate and the original, signed agreement shall be kept in the mediation file.

(c) Employees shall be entitled to obtain mediation services without interference, coercion, or reprisal.

(d) Participation in mediation sessions shall not require the use of accrued leave time if the employee has obtained prior approval of the supervisor or appointing authority.

(e) Participation in mediation shall not preclude an agency from taking disciplinary or corrective action as needed in dealing with job behavior or job performance problems.

(f) Participation in a mediation shall not affect the filing timeframes for a grievance with the cabinet or agency or on appeal with the Personnel Board.

(3) Mediation session procedures.

(a) Mediation sessions shall be conducted by mediators in the State Government Mediator Pool who do not work in the participant's employing agency.

(b) Mediation sessions shall be scheduled by the Kentucky Employee Mediation Program after receipt of the request to participate at a time convenient for all participants.

(c) The Kentucky Employee Mediation Program shall provide the participants with the names of all mediators assigned to the session. The participants may request another mediator if the appointed mediator has a conflict of interest.

(d) The participants shall ensure that all parties who have the authority to approve and implement the final mediation agreement are present at the mediation.

(e) Participation in mediation shall constitute an agreement by the parties that all offers of compromise, promises and statements made in the course of the mediation session shall not be offered as evidence or argument at any subsequent hearing or trial of the subject matter of the dispute.

(f) The content of the mediation sessions shall remain confidential as permitted by state and federal law.

(g) All contents of the official mediation file, including original, signed final agreements, shall be the property of the Kentucky Employee Mediation Program.

(h) Certified mediators shall not be subject to participation in any subsequent proceedings regarding the mediated matter.

(i) The Kentucky Employee Mediation Program or the mediator may decline the request for

mediation for reasonable cause, issue a continuance of the mediation, or terminate a mediation session.

(j) Final mediation agreements shall be reduced to writing and signed by the mediator and participants.

(k) All final mediation agreements or reports from mediations referred by the Personnel Board shall be filed with the board by the Kentucky Employee Mediation Program.

(l) The Kentucky Employee Mediation Program shall not oversee compliance with final mediation agreements.

(m) Upon request and following the conclusion of the mediation session, the Kentucky Employee Mediation Program may provide written confirmation of participation to the participant's supervisors or appointing authority.

(4) State Government Mediator Pool.

(a) The Kentucky Employee Mediation Program shall establish and provide oversight for the State Government Mediator Pool including training, certification, and technical assistance services.

(b) The State Government Mediator Pool shall consist of state government employees who volunteer to serve and who have been certified by the Kentucky Employee Mediation Program.

(c) The Kentucky Employee Mediation Program shall establish specific certification criteria based on completion of the following:

1. Minimum of fifty (50) hours of general mediation training, to include classroom training, mediation observation, mediation participation, or professional continuing education as approved by the program manager;

2. Minimum of six (6) hours of continuing education per year; and

3. Compliance with the Kentucky Employee Mediation Program's Standards of Professional Conduct.

(d) The Kentucky Employee Mediation Program shall not certify any person as a mediator if the criteria of paragraph (c) of this subsection are not met.

(e) A mediator may use state time to conduct mediation sessions with the approval of the appointing authority. The mediator's employing agency shall pay travel expenses in accordance with the provisions of 200 KAR 2:006.

(f) The Kentucky Employee Mediation Program shall maintain a current listing of certified state government mediators.

Section 2. Establishment of the Kentucky Employee Workplace Resolution Program. (1) The Personnel Cabinet shall establish and administer the Kentucky Employee Workplace Resolution Program to improve the work effectiveness of state employees.

(2) Eligibility for services.

(a) An employee in a supervisory or managerial role may request workplace resolution services for their section, branch, or division. The request shall be made to the Workplace Resolution Program by email.

(b) Participation by all parties in the Workplace Resolution Program shall be voluntary.

(c) Employees shall be entitled to participate in workplace resolution services without interference, coercion, or reprisal.

(d) Participation in workplace resolution sessions shall not require the use of accrued leave time if the employee has obtained prior approval of the supervisor or appointing authority.

(e) Participation in workplace resolution shall not preclude an agency from taking disciplinary or corrective action as needed in dealing with job behavior or job performance problems.

(f) Participation in workplace resolution shall not affect the filing timeframes for a grievance with the cabinet or agency or an appeal with the Personnel Board.

(3) Workplace resolution session procedures.

(a) Workplace resolution sessions shall be conducted by mediators in the State Government Mediator Pool, as set forth in Section 1(4)(b) of this administrative regulation, who do not work in the participant's employing agency.

(b) A mediator may use state time to conduct workplace resolution sessions with the approval of the appointing authority. The mediator's employing agency shall pay travel expenses in accordance with the provisions of 200 KAR 2:006.

(c) Workplace resolution sessions shall be scheduled by the Workplace Resolution Program after receipt of the request for the service and confirmation of agreement to participate at a time convenient for all participants.

(d) All parties who have the authority to approve and implement any recommendations shall participate in the process.

(e) The content of the workplace resolution sessions shall remain confidential as permitted by state and federal law.

(f) All contents of the workplace resolutions file shall be the property of the Workplace Resolution Program.

(g) Certified mediators shall not be subject to participation in any subsequent proceedings regarding the matter that is the subject of workplace resolution sessions.

(h) The Workplace Resolution Program or the mediator may decline the request for workplace resolution for reasonable cause, issue a continuance of the workplace resolution proceedings, or terminate a workplace resolution session.

(i) The Workplace Resolution Program shall not oversee compliance of any final workplace resolution program recommendations, and any workplace resolution program recommendations are optional and not mandatory.

(j) Upon request and following the conclusion of any workplace resolution session, the Workplace Resolution Program may provide written confirmation of participation to the participant's supervisors or appointing authority.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Mediation Request Form", June 2019; and

(b) "KEMP Standards of Professional Conduct", February 2008.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Personnel Cabinet, 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (34 Ky.R. 1591; Am. 2089; eff. 4-4-2008; 46 Ky.R. 44, eff. 10-4-2019.)